Supreme Court, U.S.
FILED

(1)

No. 98 1882 MAY 24 1999

OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

October Term, 1998

Michael Andrew Peek
Petitioner

v.

Terry LynnPeek
Respondent

On Petition For Writ Of Certiorari
To The Missouri Supreme Court

PETITION FOR WRIT OF CERTIORARI

Michael Peek, in pro per
% 4 Eisenhouser Dr.
St. Peters, Missouri 63376
314/ 978-1113

178

QUESTION PRESENTED

This petition presents a question of first impression within the scope of the due process clause of the United States Constitution which has an impact upon every appeal filed within the State of Missouri.

State court promulgated procedural rules authorize appellate review which in so doing violates fundamental rights of due process guaranteed by the 14th Amendment to the United States Constitution.

LIST OF PARTIES

The parties to this proceeding are:
Michael Andrew Peek, Petitioner, and
Terry Lynn Peek, Respondent.

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OPINIONS BELOW

The opinion of the Missouri Court of Appeals is attached as Appendix A and is unpublished.

JURISDICTION

A petition for writ of certiorari to the Supreme Court of the State of Missouri was denied 23 February 1999. A copy of this decision appears at Appendix D.

This Court has jurisdiction pursuant to 28 USC § 1257(a)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment XIV to the United States Constitution is set forth in Appendix E.

Missouri Supreme Court Rules73.01 and 84.13 are set forth in appendices F and G.

STATEMENT OF THE CASE

On 12 November 1997 a Decree of Dissolution of marriage was entered against this Petitioner.

The judgment decree was appealed to the Missouri Court of Appeals, Eastern District, which affirmed the judgment upon a substantial evidence review only.

Petitioner then filed a timely motion for rehearing and / or transfer to the Missouri Supreme Court, which was denied on January 19, 1999

Petitioner filed for writ of certiorari with the Supreme Court of Missouri on February 3, 1999 and was denied on February 23, 1999.

Petitioner presented the question on review before this Court to the Missouri Court of Appeals in his Motion for Rehearing and / or Transfer, then to the Supreme Court of Missouri in the petition for writ of certiorari.

REASONS FOR GRANTING THE PETITION

State court promulgated procedural rules authorize appellate review which in so doing violates fundamental right of due process guaranteed by the 14th Amendment to the United States Constitution.

Missouri Supreme Court Rules 73.01 and 84.13 authorize standards for appellate review in the Missouri Court of Appeals. In so doing, the Missouri Supreme Court has violated the due process clause of the United States Constitution.

Existing rules of appellate review are constitutionally defective in that the present procedure is misleading or vague, because it does not specify plain error review prior to an application of substantive evidence review.

Under the existing rules of appellate review, as created and promulgated by the Missouri Supreme Court, the review standards to be applied are selected firstly or primarily upon the basis of whether the proceedings in the trial court were conducted with or without a trial jury. This fact gives rise to what might be described as errors committed in the appellate court. Where an appellate court is constrained by rules of appellate review which are in and of themselves defective, the appellate court might be said to have no choice but to continue to commit errors during the course of appellate review which impact and are detrimental to constitutionally secured fundamental rights of due process.

CONCLUSION

Therefore, for the reasons set forth the Petitioner respectfully prays that a writ of certiorari should issue.

Respectfully submitted,

Dated this 18 May 1999

Michael Andrew Peek

Michael Andrew Peek, In pro per
% 4 Eisenhouser Dr.
St. Peters, MO 63376
314/ 978-1113

PROOF OF SERVICE

I, Michael Andrew Peek, pursuant to Supreme Court Rules 29.3 and 29.4, and to 28 U.S.C. §1746, declare that I have served my Petition for a Writ of Certiorari on each party to the above proceeding, or that party's counsel, and on every person required to be served by depositing an envelope containing the above documents in the United States mails properly address to each of them and with first-class postage prepaid, as follows:

Wesley C. Dalton
Marks Building, Suite 100
201 W. Main Street
Warrenton, Missouri 63383 314/ 456-7969

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 18 day of May 1999

Michael Andrew Peek

Michael Andrew Peek, in pro per

IN THE MISSOURI COURT OF APPEALS
EASTERN DISTRICT
DIVISION ONE

TERRY LYNN PEEK,	)	No. 74287
	)	
Appellee/Respondent,	)	Appeal from the Circuit
	)	Court of Warren County
vs.	)	
	)	Honorable Edward D. Hodge
	)	
MICHAEL ANDREW PEEK,	)	OPINION FILED:
	)	October 27, 1998
Appellant.	)	

ORDER

Before James A. Pudlowski, P.J., William H. Crandall, Jr., and Clifford H. Ahrens, JJ. **PER CURIUM**.

Husband, Michael Andrew Peek, appeals from judgment of dissolution. The judgment is supported by substantial evidence and is not against the weight of the evidence; no error of law appears. An opinion would have no presidential value. The judgment is affirmed. Rule 84.16(b). Further, the husband is ordered to pay wife, Terry Lynn Peek, $2500.00 as damages for filing of a frivolous appeal. Rule 84.19

Appendix A

IN THE MISSOURI COURT OF APPEALS
EASTERN DISTRICT

TO: Attorneys of Record

FROM: Lynn Cooper Hearnes, Clerk

DATE: January 19, 1999

RE: Motions For Rehearing And/Or Transfer To Supreme Court Denied

1. ED72263 K. KHAN, INC. & SH APEL V WORTHAM, ERIC & WO RES
2. ED72976 INVESTORS TITLE CO RES V CHICAGO TITLE INSU APEL
3. ED73296 HALL, BETTY E. ET APEL V JANES, ELDON ET AL RES
4. ED73321 STATE OF MISSOURI RES V ARMSTRONG, RONALD APEL
5. ED73522 PEEK, TERRY LYNN RES V PEEK, MICHAEL ANDR APEL
6. ED73530 HAIR, BARRIE PERRY RES V VOSKUIL, REICK APEL
7. ED73542 ROOF, THOMAS BRADL APEL V DIRECTOR OF REVENU RES
8. ED73605 HOENIG, CHARLES E. APEL V CORRIGAN BROTHERS RES
9. ED73639 COONROD, TIM RES V ARCHER DANIELS MID APEL
10. ED 73773 UNION SEVENTY PART APEL V MARK TWAIN BANK RES
11. ED 73902 JONES, BRENDA APEL V TRITTLER, REGAN M. RES
12 ED74022 UNITED COMPANIES L APEL V TRIUMPH PROPERTIES RES
13. ED74287 CITY OF MANCHESTER RES V MICHAEL BABCOCK APEL

Appendix B

IN THE CIRCUIT COURT OF WARREN COUNTY, MISSOURI
CIRCUIT JUDGE DIVISION

In Re the Marraige of:	)	
	)	
TERRY LYNN PEEK,	)	
Petitioner	)	Cause No. CVR597-086DR
	)	
vs.	)	
	)	
MICHAEL ANDREW PEEK	)	
Respondent		

JUDGMENT AND DECREE OF DISSOLUTION

NOW ON THIS twelfth day of November, 1997, this cause comes on for trial, Petitioner, Terry Lynn Peek, appearing in person and by and through her attorney, Wesley C. Dalton and Respondent, Michael Andrew Peek, having been given notice, appears in person/appears not, whereupon said cause is taken up for hearing and submitted to the court upon the pleadings and proof adduced, and thereupon, the Court having heard evidence submitted and being well and truly advised in the premises, finds:

1. That Petitioner has been a resident of the State of Missouri for ninety days next proceeding the commencement of this action, now residing in Warren County, Missouri;

2. That the Respondent has been a resident of the State of Missouri for ninety days next proceeding the commencement of this action, now residing in St. Charles County Missouri;

3. That more that thirty days have elapsed since the filing of this Petition;

4. That Respondent was personally served with summons and a copy of the Petition for Dissolution of Marriage;

5. That Petitioner and Respondent are both over eighteen (18) years of age;

6. That Petitioner and Respondent were married on June 10, 1983 in Warren County Missouri and said marriage is registered there;

7. That Petitioner and Respondent separated on or about March 11, 1997;

8. That there were no children born of this marriage of Petitioner and Respondent and that Petitioner is not now pregnant;

9. That neither Petitioner nor Respondent are members of the Armed Forces of the United States or its allies;

10. That the Respondent has behaved in such a manner that the Petitioner cannot be expected to live with Respondent;

11. That there is no reasonable likelihood that the marriage of Petitioner and Respondent can be preserved and, therefore, the marriage is irretrievably broken;

12. That Petitioner has waived maintenance, and is aware that by not asking for maintenance at the time of this hearing on the Dissolution of Marriage, that Petitioner will be forever barred from asking this or any other Court for maintenance in the future, and that the Respondent has made no request for maintenance;

13. That Petitioner and Respondent have accumulated property and debt during the course of their marriage;

14. That Petitioner's social security number is 491-66-0543 and Respondent's social security number is 500-72-4210;

15. That at the time of this hearing, Petitioner is employed by Kroger in Warrenton, Missouri;

16. That at the time of this hearing, Respondent is incarcerated in the Missouri Western Correctional Center in Cameron, Missouri, although he is not actually in the facility, but is under home confinement in St. Charles, Missouri;

17. That there is marital real estate subject to division by this Court as attached hereto and incorporated herein by reference as Attachments A and B.

18. That this Court has the proper jurisdiction and venue to hear said dissolution;

19. That the Petitioner requests that she be restored to her maiden name of "Terry Lynn Quillen";

20. That prior to this hearing, the Petitioner and Respondent have divided and disposed of numerous items of their marital property with the exception of the items listed herein below,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

That the marriage of Terry Lynn Peek and Michael Andrew Peek is dissolved.

That Petitioner and Respondent shall each be granted as his/her separate property, that property that each now has in his/her possession, subject to any disposition ordered herein;

That Petitioner and Respondent shall also be granted as his/her separate property, those items which each has in his.her possession which may or may not to have been determined to be marital property subject to any disposition made herein;

That both Petitioner and Respondent shall each be granted as his/her separate property any and all pension, annuities, savings plans, and/or retirement benefits through his/her employment;

That Respondent shall be awarded the following property free and clear from any claim by Petitioner:

1. The 1978 Freight Line diesel tractor, VIN#CA213 HL45678
2. All of Respondent's tools, approximate value of $100,000
3. The 1966 Chevrolet service truck
4. Tool box, approximate value $4,500
5. All trailers (moving dry box), filled with parts new and used, engines supplies, approximate value $20,000
6. Sand blaster
7. Compressor
8. Parts washer
9. Back hoe tractor
10. Any and all household items and personal items currently in Respondent's possession.

The Respondent is ordered to make arrangements to have his personal property removed and in fact have it removed from the Spoede Road property within thirty (30) days of an entry of Judgment and Decree in this cause. The Petitioner is ordered to cooperate in allowing the Respondent or his agents or representatives access to

the Spoede Road property for purposes of removing his personal property from said Spoede Road property.

The Respondent shall also be awarded the Township Line property as legally described in Attachment A which is attached hereto and incorporated herein by reference. The Petitioner is ordered to execute a Quit Claim Deed in favor of the Respondent concerning this real estate.

The Petitioner shall be awarded the following property free and clear from any claim by the Respondent:

1. The 1988 Chevrolet Corsica, VIN# 1G1G1T511JY215555
2. The 1985 Chevrolet pickup truck, VIN# 1GCHC33J9FS12063
3. The yellow tow bar
4. Any and all household and personal items currently in Petitioner's possession;

The Petitioner shall also be awarded the Spoede Road Lane property as legally described in Attachment B attached hereto and incorporated herein by reference. The Respondent is ordered to execute a Quit Claim Deed in favor of the Petitioner concerning this real estate.

That Respondent shall pay the following debts, and shall hold harmless and indemnify Petitioner against all of the following debts, and shall pay to Petitioner all sums including her reasonable attorney's fees that are caused to be paid by Petitioner as a result of the Respondent's failure to meet these obligations:

1. Any and all debts incurred by the Respondent since the date of separation of March 11, 1997, and any and all debts incurred by Respondent in the Respondent's name;

2. Any and all debts due and owing on any of the property in Respondent's possession or herein awarded to Respondent, any and all debts in Respondent's name, and any and all medical bills dues and owing in Respondent's name.

The Petitioner shall pay the following debts, and shall hold harmless and indemnify Respondent against all of the following debts, and shall pay to Respondent all sums including his reasonable attorney's fees that are caused to be paid by Respondent as a result of the Petitioner's failure to meet these obligations.

1. Any and all debts incurred by Petitioner since the date of separation of March 11, 1997 and any and all debts incurred by the Petitioner in the Petitioner's name;

2. any and all debts due and owing on any of the property in Petitioner's possession or herein awarded to Petitioner, any and all debts in Petitioner's name, and any and all medical bills due and owing in Petitioner's name;

Both Respondent and Petitioner are ordered to execute Affidavits of Gifts and any other documents required by the other party in order to effectuate the transfer of any vehicles or other property granted to the other party;

Each party shall retain his or her savings and checking accounts;

That the Respondent and Petitioner shall each pay his/her own attorney fees;

That there shall be no award of maintenance to either party;

That the Petitioner shall pay the court costs of his action;

That the Petitioner shall be restored to her maiden name of "Terry Lynn Quillen".

Date:11-13-97 Entered //s Edward D. Hodge, Judge

State of Missouri

SS

County of Warren

I, Circuit Clerk and Ex-Officid Recorder of deeds of Warren County, certify that the foregoing is a true and correct copy of the original document in my custody.

Witness by my hand and seal this 13th day of November, 1997

//s

Notary Seal

In the Supreme Court of Missouri

No. 81382
E.D. No. 74287

January Session, 1999

Terry Lynn Peek, Respondent,

vs. (TRANSFER)

Michael Andrew Peek, Appellant.

Now at this day, on consideration of appellant's application to transfer the above-entitled cause from the Missouri Court of Appeals,Eastern District, it is ordered that the said application be, and the same is hereby denied.

STATE OF MISSOURI-Sct.

I, Thomas F. Simon, Clerk of the Supreme Court of the State of Missouri, certify that the foregoing is a full, true and complete transcript of the judgement of said Supreme Court, entered of record at the January Session, 1999, and on the 23rd day of February, 1999, in the above-entitled cause.

Given under my hand and seal of
said court, at the City of Jefferson,
this 23rd day of February, 1999,

//s Thomas F. Simon Clerk

_____ D.C.

Appendix D

AMENDMENT XIV
(Proposed by Congress June 13, 1866. Ratified July 9, 1868)

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor to deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of Electors for President and Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or Elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

MISSOURI SUPREME COURT RULES

RULE 73.01 TRIAL WITHOUT JURY OR WITH AN ADVISORY JURY—PROCEDURE

(a) In cases tried without a jury or with an advisory jury:

(1) The court shall rule upon all objections to evidence as in jury cases. Where the evidence is ruled inadmissable the court upon request shall take and record the evidence in full, unless it clearly appears that the evidence is not admissible on any ground or that the evidence is privileged.

(2) The court shall render such judgment that it thinks proper under the law and the evidence. If any party so requests before final submission of the case, the court shall dictate to the court reporter, or prepare and file, a brief opinion containing a statement of the grounds for its decision and the method of determining any damages awarded; and may, or if requested by counsel shall, include its findings on such controverted fact issues as have been specified by counsel. All fact issues upon which no specific findings are made shall be considered as having been found in accordance with the result reached.

(3) Not later than 15 days after the entry of judgment, a party may, but need not, file a motion for new trial or a motion to amend the judgment and opinion, or both.

(b) For appellate review of cases tried without a jury, neither a motion for new trial nor a motion to amend the judgment is necessary to preserve any matter for appellate review.

(c) On appellate review:

(1) The court shall review the case upon both the law and the evidence as in suits of an equitable nature.

(2) Due regard shall be given to the opportunity of the trial court to have judged the credibility of witnesses.

(3) The court shall consider admissible evidence which was rejected by the trial court and preserved. The court may order that proffered evidence which was rejected by the trial court and not preserved be taken by deposition or by reference to a master under Rule 68.03 and returned to the appellate court.

MISSOURI SUPREME COURT RULES

RULE 84.13 ALLEGATIONS OF ERROR CONSIDERED—REVERSIBLE ERROR

(a) Preservation of Error in Civil Cases. Apart from questions of jurisdiction of the trial court over subject matter and questions as to the sufficiency of pleadings to state a claim upon which relief can be granted or a legal defense to a claim, allegations of error not briefed or not properly briefed shall not be considered in any civil appeal and allegations of error not presented to or expressly decided by trial court shall not be considered in any civil appeal from a jury tried case.

(b) Materiality of Error. No appellate court shall reverse any judgment unless it finds that error was committed by the trial court against the appellant materially affecting the merits of the action.

(c) Plain Error May Be Considered. Plain errors affecting substantial rights may be considered on appeal, in the discretion of the court, though not raised or preserved, when the court finds that manifest injustice or miscarriage of justice has resulted therefrom.